

PUBLIC MEETING MINUTES

December 14, 2006

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95814

Chairman Duncan called the meeting to order at 10:00 a.m.

Members Present

John C. Duncan, Chairman
Lilian S. Shek, Member
Sally M. McKeag, Member
Karen L. Neuwald, Member

Staff Present

Robin Wesley, Acting General Counsel
Fred D'Orazio, Chief Administrative Law Judge
Bernard McMonigle, Administrative Law Judge
Eileen Potter, Chief Administrative Officer
Les Chisholm, Regional Director

Call to Order

Chairman Duncan called the Board to order for the continuous open session of the October 12, 2006, Board meeting. He reported that the Board met in continuous closed session to deliberate on cases pending on the Board's docket.

Since that open session in October, the Board has issued PERB Decision Nos. 1863, 1864-S, 1865-M, and Administrative Appeal Decision No. Ad-357. The request for injunctive relief in I.R. No. 504 (City of San Jose v. Operating Engineers Local 3) was withdrawn and I.R. No. 510 (Amalgamated Transit Union Local 1700 v. Omnitrans) was denied by PERB. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Before commencing the December 14, 2006 meeting, Chairman Duncan announced that the Board selected Bernard McMonigle as its new Chief Administrative Law Judge (ALJ), effective December 31, 2006. Mr. McMonigle has been on the staff of PERB since 1988. Prior to his permanent appointment as a PERB ALJ in 2004, he served as a Senior Counsel in the Office of the General Counsel and on temporary ALJ assignments since 1995. He also worked as a labor relations neutral since 1977, when he was appointed as a Commissioner of Mediation for the Federal Mediation and Conciliation Service. Before joining PERB, he was a Board Counsel for the California Agricultural Labor Relations Board. He has also served as an

Arbitrator and an ad hoc Hearing Officer for the Sacramento County Civil Service Commission. His nearly thirty years of experience in all aspects of public sector labor law as well as his proven, demonstrated commitment to achieving PERB's mission through his many positions held at PERB, proved him an excellent choice for the position. He will be succeeding the current Chief ALJ Fred D'Orazio who announced his pending retirement from State service earlier this year.

Chairman Duncan was also pleased to announce the appointment of his new Legal Adviser, Christine Lovely. Ms. Lovely has served at the Law Office of Atkinson, Andelson, Loya, Ruud and Romo since 1996 and Chairman Duncan, along with the full Board, welcomed her to PERB.

Member Shek took this opportunity to thank the Governor's Office for appointing Jean Chen Fung as her new Legal Adviser, effective October 2006. Ms. Fung graduated from Stanford University in 1992 with degrees in Civil Engineering and English. She received her J.D. from UC Berkeley, Boalt Hall School of Law in 1995 and was admitted to practice law in the states of California and Connecticut. From 1995 to 1997, Ms. Fung was an Associate at Fitzgerald, Abbott & Beardsley LLP in Oakland, CA and from 1998-2002, she was an Associate in a law firm in Hartford, Connecticut. After moving back to California, she performed contract work for Sacramento law firms. Member Shek and the full Board welcomed Ms. Fung to PERB.

Motion: Motion by Member McKeag and seconded by Member Shek to close the October 12, 2006, public meeting.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Chairman Duncan opened the meeting of December 14, 2006 and Member Neuwald led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Neuwald and seconded by Member McKeag that the Board adopt the minutes of the Public Meeting of PERB for October 12, 2006.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Chief Administrative Officer Eileen Potter reported that in early January, the Governor will release his Fiscal Year 2007-2008 Governor's Budget. PERB's budget was included as budgeted and it reflected the Board's commitment to staff and its constituents to seek the resources necessary for the agency to carry out its mission and to address the ever growing workload.

Ms. Potter reported that the budget hearings will begin in March 2007 and is hopeful that PERB's budget requests will remain as proposed.

b. Legal Report

Before commencing the Legal Report, Chairman Duncan acknowledged and commended Acting General Counsel Robin Wesley and her staff for their abilities to maintain a constant and viable production level in their Division, while in the absence of a General Counsel.

Ms. Wesley reported that the case processing and litigation reports were distributed to the Board for their review. She stated for the month of November 2006, there were 55 new charges filed.

In regards to litigation, Ms. Wesley reported on the following cases: 1) Board of Trustees of California State University v. PERB and California Faculty Association, Docket No. 06-376, the University recently filed its reply brief and the case is pending before the 2nd District Court of Appeal. 2) Contra Costa Community College District v. Public Employment Relations Board and Paul Pitner, First District, Court of Appeal, Case No. A115195 (PERB Case No. SA-CE-2292-E, Decision No. 1852), the District appealed the decision in this case and has since filed a dismissal of its appeal which the court granted. The case is now closed. 3) King City Joint Union High School v. Public Employment Relations Board, Docket No. 05-368, PERB Decision No. 1777, is fully briefed and is pending before the Court of Appeal. She reported discussion of settlement by the parties and a settlement conference was held with the Court of Appeals.

In regards to cases involving the "essential employee" strikes, Ms. Wesley reported on the following cases: 1) City of San Jose v. Operating Engineers Local Union No. 3, Docket No. 06-388. The opening brief was filed and the union filed a response. The City of San Jose now has the opportunity to file a reply brief which is due by the end of January. PERB is not a party to this case, but filed an amicus brief. 2) County of Contra Costa v. Public Employees Union Local One, et al, Docket No. 06-383 and County of Contra Costa v. California Nurses Association, et al, Docket No. 06-384, an opening brief is due to be filed by PERB in these consolidated cases on January 19, 2007. 3) County of Sacramento v. AFSCME Local 146, et al, PERB is waiting for the record to be filed with the court

before the briefing schedule begins. 4) County of Santa Clara v. SEIU Local 535 and Local 715, Docket No. 06-396, notice of appeal was just recently filed with the Court of Appeal by the Trial Court.

Ms. Wesley announced that Mary Creith, PERB Los Angeles Regional Attorney, will be leaving PERB for another position. After working at PERB for three years, Ms. Creith was commended for her dedicated service to the agency and the Board wished her well in her new venture.

As Chief Administrative Law Judge Fred D'Orazio's retirement grows near, he reiterated that it has been an enjoyable journey working at PERB. He commended the Board for upholding the mission of the agency with such a small staff of individuals. He also congratulated his successor, Bernie McMonigle, stating that he was confident that Bernie would continue to do a great job for the Administrative Law Division.

On behalf of the Board, Chairman Duncan wished Mr. D'Orazio well on his retirement and commended him again for his many years of dedicated service to PERB. Member Shek echoed Chairman Duncan's statement and added that she personally benefited tremendously from his institutional knowledge and training in public sector labor relations issues.

c. Legislative Report

Regional Director Les Chisholm reported that the Legislature was not currently in session, thus no new legislative information was available to bring forth at this meeting.

At the last public meeting, Mr. Chisholm stated that the Board authorized the staff to commence the rulemaking process with regard to the Board's agency fee regulations. He indicated that the Notice of Proposed Rulemaking was published by the Office of Administrative Law on December 1, 2006 and a copy of the Notice was mailed to interested parties on PERB's agenda mailing list. The Notice of Proposed Rulemaking, as well as the proposed text and initial statement of reasons, was also made available on the PERB website. The public hearing on the proposed rulemaking is scheduled for the next Board meeting on February 8, 2007. At this time, no comments were received on the proposals, but it is anticipated that written comments may be received by the next scheduled public meeting.

Motion: Motion by Member Shek and seconded by Member Neuwald that the Administrative, Legal Reports (including General Counsel and Chief Administrative Law Judge) and Legislative Reports be received.

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

Old Business

None.

New Business

Chairman Duncan requested PERB's Office of General Counsel give a short briefing on the proposed rulemaking package. The subject matter addressed included: 1) proof of support requirements, 2) revocation of proof of support, and 3) certification of exclusive representatives under EERA, as well as other changes that clarify, conform or correct grammatical errors in existing regulations.

Mr. Chisholm proceeded with his presentation and gave the Board an overview and historical background of the formulation of the proposed rulemaking package. He first requested the Board to authorize the commencement of the formal rulemaking process for another set of proposed changes to PERB's regulations. He stated that staff is recommending that the Board consider proposed changes to regulations that fall into three general categories. The first category can fairly be described as "clean up," making grammatical, clarifying or conforming changes. The conforming changes largely relate to items missed in earlier rulemaking. The other two categories are substantive and relate to changes in both statutory and case law.

To provide an overall context, Mr. Chisholm first noted that the statutes administered by PERB did not, prior to 2001, mandate recognition of employee organizations based solely on a review of proof of support materials. While certain of the statutes, including EERA and HEERA, allowed for voluntary recognition based on a card check, and in fact voluntary recognition was quite common under EERA, recognition was never mandated without an election.

Mr. Chisholm stated that in 2001 the MMBA was amended, effective January 1, 2002, to require an employer to recognize an employee organization based solely on a card check, so long as the petition involved an appropriate unit and there was no competing organization. Since PERB seldom handles representation matters under the MMBA, this change did not significantly affect how PERB processed cases.

Mr. Chisholm stated that in 2003, both EERA and HEERA were amended, effective in 2004, to also provide for card check recognition where a petitioner demonstrates majority support in an appropriate unit and there is no intervening petitioner.

He went on to describe the first substantive change recommended, providing for a mechanism for PERB to certify an exclusive representative under EERA where the requirements for card check recognition are met. This provision was previously adopted for HEERA, and its absence has been problematic under EERA.

He stated that the second, and more extensive, area involved proof of support. While a number of changes are recommended, Mr. Chisholm called particular attention to two. First, the proposed changes would add a requirement for proof of support in cases where a petition may

lead to recognition of the petitioner as exclusive representative without an election. In such a case, PERB staff recommends the Board consider adding a requirement that the proof of support material include language by which the employee signing acknowledges that an election may not be required.

Second, PERB staff is recommending the Board consider regulations addressing when and how an employee can revoke an authorization card or petition previously signed by the employee. In early 2006, the Board for the first time recognized a right of employees to revoke authorization cards. (Antelope Valley Health Care District (2006) PERB Decision No. 1816-M (Antelope Valley).) During 2006, staff had two representation cases where the revocation issue had to be addressed and did so with Antelope Valley as guidance but without any regulations that addressed when support may be revoked or how it may be revoked.

Thus, Mr. Chisholm indicated that staff is recommending the Board consider the adoption of regulations concerning revocation of proof of support. However, staff will recommend that revocation be available as an option only in cases that may not require an election and would not be available in cases, such as fair share fee rescission and decertification, where no change in the status quo can result without an election.

Mr. Chisholm closed by stating, if the Board authorizes staff to commence the formal rulemaking process on the aforementioned issues, they would submit the notice publication request to the Office of Administrative Law by the end of January 2007, with a requested publication date of February 9, 2007, and set the public hearing on the proposed rulemaking for the meeting of the Board on April 12, 2007.

Motion: Motion by Member Neuwald and seconded by Member McKeag to forward the proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process.

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

General Discussion

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through February 8, 2007 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member McKeag and seconded by Member Shek that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

Respectfully submitted,

Chris Wong, Executive Assistant

APPROVED AT THE PUBLIC MEETING OF:

John C. Duncan, Chairman